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No. 94-1984

In The

Supreme Court of the United States

October Term, 1994

MATTHEW GENSBURG, *et al.*,

Petitioners,

v.

FRED MILLER, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
First Appellate District

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Court below upheld the granting of demurrers to the Second Amended Complaint filed by petitioners alleging violation of their Federal Civil Rights under 42 U. S. Code § 1983 on the basis that both the State and County defendants were entitled to absolute immunity.

The question presented with respect to the County defendants (the County of San Mateo and three of its social worker employees) is:

1. Are the County defendants, when performing a statutorily mandated investigation of allegations of child abuse or neglect of foster children in petitioners' foster family home and transmitting the report of the investigation to the State Department of Social Services prosecutorial officials entitled to absolute immunity in a Federal Civil Rights case emanating from the temporary suspension of the foster family license during the pendency of the administrative law proceeding?

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents Stuart R. Oppenheim, Pat Crawford, Marjorie Knoop and County of San Mateo respectfully request that this Court deny the petition for a writ of certiorari seeking review of the California Court of Appeal, First Appellate District opinion in this case.

OPINIONS BELOW

The opinion of the California Court of Appeal, First Appellate District is reported at 31 Cal.App.4th 512, 37

Cal.Rptr. 2d 97. The opinion of the trial court is unreported.

JURISDICTION

The California Supreme Court *en banc* denied petitioners' petition for review on March 2, 1995. Petitioner has invoked jurisdiction under 28 U.S.C. § 1257 (validity of a statute as being repugnant to the Constitution or laws of the United States).

STATUTORY PROVISION INVOLVED

In their petition, the petitioners raise for the first time the issue as to whether California Health and Safety Code section 1550(e) is repugnant to the laws of the United States but do not argue this issue in their brief.

California Health and Safety Code § 1550(e) permits the temporary suspension of any license granted by the State Department of Social Services (hereinafter "State DSS") pending a hearing and final determination on the merits. [The Director of the State DSS must notify the licensee of the temporary license suspension and contemporaneously advise the licensee of the effective date of the suspension and serve the licensee with an accusation, within fifteen days of the receipt of a Notice of Defense to the accusation by the licensee set the matter for hearing before an administrative law judge and the hearing must be held as soon as possible but not later than thirty days after the receipt of the Notice of Defense.] [The full text of

all California statutes cited in this brief are set forth in Appendix A.]

The Court below recognized that the temporary license suspension provisions of Section 1550 have been upheld against constitutional attack. In *Habrun v. Department of Social Services,* (1983) 145 Cal.App.3d 318, 193 Cal.Rptr. 340, the California Court of Appeal concluded that the Director of the State Department of Social Services did not violate the due process rights of the owners of a residential care facility for the elderly by summarily suspending the facility's license and its operations pursuant to Health and Safety Code Section 1550 pending a hearing on allegations of physical abuse and negligence endangering the health and safety of their residents. The court found that due process permits the State to temporarily deprive a citizen of the enjoyment of a property right, if the State's interest is both compelling and urgent and a timely hearing is provided. The safety of foster children in this case was such a compelling interest. Moreover, the statute permits suspension only when the Director of the State Department of Social Services reasonably believes continued operation of the facility would threaten its residents.

STATEMENT OF THE CASE

A. Proceedings Below

This Federal Civil Rights action arises out of an administrative license revocation proceeding commenced by the Director of the California State Department of

Social Services against a foster family home license granted to petitioners, Matthew and Pamela Gensburg.

The County of San Mateo Department of Social Services (hereinafter "County DSS") is a public foster family agency to whom the State DSS pursuant to Title 22 California Administrative Code (Cal. Code Regs. Tit. 22) § 88050 delegates the responsibility to investigate complaints of child abuse or neglect involving state licensed foster family homes. This provision of the California Administrative Code requires the State DSS to investigate *all* complaints of child abuse or neglect as defined by California Penal Code § 11165.2 (which defines "neglect") and § 11165.6 (which defines "child abuse").

Upon receipt of a complaint, the County DSS must notify the State licensing agency of any such complaint by telephone by the next working day following the receipt of the complaint (Cal. Code Regs. Tit. 22, § 88050(b)); make a site visit within ten calendar days after receiving the complaint (Cal. Code Regs. Tit. 22, § 88050(c)) and submit a written report to the State licensing agency relating to the findings of the investigation within ten days after the investigation has been completed (Cal. Code Regs. tit. 22, Code § 88050(f)). The report of the investigation by the County DSS must contain certain specific items (list of the complaint allegations, identity of persons who conducted investigation, persons contacted at licensed foster family home, summary of investigation and rationale for the action taken). (Cal. Code Regs. Tit. 22, § 88050(f)(1)).

Upon completion of the investigation the County DSS must make a determination as whether the alleged

incidents did occur specifying either that the alleged incidents were as a result of the investigation either found to be "substantiated", "inconclusive", or "unfounded". (Cal. Code Regs. Tit. 22, § 88050(f)(2)). The State DSS as the licensing agency has the authority to conduct a separate investigation of the licensee. (Cal. Code Regs. Tit. 22, § 88050(j)).

In the underlying case, the County DSS investigation was conducted pursuant to the California Administrative Code and the report submitted as required to the State DSS. On September 17, 1991 the State DSS issued an accusation and an eleven day evidentiary hearing was conducted pursuant to the provisions of California Government Code § 11500 et seq. during October and November 1991. An administrative law judge issued a proposed decision in January 1992 recommending dismissal of all charges. The petitioners' license which had been temporarily suspended when the accusation was filed September 17, 1991 was reinstated in February 1992 pending a final decision by the State DSS. (The suspension of the license was vacated pursuant to the provisions of Health and Safety Code section 1550(e) since the Director of the State DSS failed to make a final determination on the merits within 30 days after the administrative law judge submitted his proposed decision).

In August 1992 the State DSS pursuant to California Government Code § 11521 revised the proposed decision and imposed certain conditions of probation upon the petitioners.

In December 1992 the petitioners' petition for writ of mandate was granted by the trial court which reversed

the State DSS decision and fully reinstated the petitioners' license, eliminating the conditions of probation. This action then followed.

B. Decision Below

Both the County and State defendants demurred to petitioners' complaint and eventually the court below sustained the demurrers to the second amended complaint without leave to amend on the basis that both the State and County defendants were entitled to absolute immunity.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The decision of the Court of Appeal is consistent with and there is no conflict in the Federal Circuit Courts of Appeal extending absolute liability to county social workers performing statutorily mandated duties.

The decision of the court below is *consistent* with prior decisions in federal cases which have afforded absolute immunity to social workers performing statutorily mandated duties and the decision does not raise any new or novel questions of law.

The complaint was framed strictly as an action under Section 1983 of the Federal Civil Rights Act. Since the Federal Civil Rights Act was intended by Congress as a remedy to prevent unconstitutional acts by state and local officials, the scope of immunity of governmental officials is controlled by federal law.

The absolute immunity which was initially applied to activities of prosecutors has been extended by most federal courts to social workers performing statutorily authorized functions concerning child welfare issues. *Meyers v. Contra Costa County Department of Social Services* (9th Cir. 1987) 812 F.2d 1154, *cert. den.*, 484 U.S. 829 (social workers performing quasi-prosecutorial functions in connection with the initiation and pursuit of child dependency proceedings).[1]

Petitioner herein argues that the county defendants cannot partake of the prosecutor's absolute immunity because they do not have the authority to initiate or prosecute license revocation proceedings. The court below properly recognized the existing federal law, which focuses not on the government official's job title or status but on the function they were performing while engaged in the alleged misconduct.

This Court has repeatedly endorsed a "functional approach" in deciding whether particular actions of government employees are subject to absolute immunity. *Forrester v. White* (1988) 484 U.S. 219, 224, 108 S.Ct. 538, 98 L.Ed.2d 555; *Burns v. Reed* (1991) 500 U.S. 478, 111 S.Ct.

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[1] There are a series of decisions throughout the Circuit Courts of Appeal holding social workers and like officials are entitled to absolute immunity in child custody cases on account of testimony and other steps taken to present a custody case for court decision. *Frazier v. Bailey* (1st Cir. 1992) 957 F.2d 920; *Vosburg v. Department of Social Services* (4th Cir. 1989) 884 F.2d 133; *Stem v. Ahearn* (5th Cir. 1990) 908 F.2d 1; *Kurazwa v. Mueller* (6th Cir. 1984) 732 F.2d 1456; *Millspaugh v. County Department of Public Welfare* (7th Cir. 1991) 937 F.2d 1172; *Coverdell v. Department of Social and Health Services* (9th Cir. 1987) 834 F.2d 758.

1934, 114 L.Ed.2d 547; *Buckley v. Fitzsimmons* (1993) 509 U.S. ___, 113 S.Ct. 2606, 125 L.Ed.2d 209. As the court properly recognized below, under the functional approach, the relevant inquiry is not the *position* of the government employee but instead "immunity is justified and defined by the *function* it protects and serves, not the person to whom it attaches." *Forrester, supra,* 484 U.S. at 227 (emphasis in original).

Under the functional approach, there are two critical factors in determining whether the defense of absolute immunity is available. First, was the immunity recognized at the time the Federal Civil Rights Act, 42 U.S.C. § 1983 was enacted? Second, is it appropriate to extend absolute immunity in order to protect that individual's ability to perform his or her function?

On the first prong of the analysis, the leading case following the "functional comparability" test set forth by this court in *Butz v. Economu* (1978) 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895, is *Whelehan v. Monroe County* (W.D.N.Y. 1983) 558 F.Supp. 1093, which held that the role of social workers in reporting suspected child abuse was analogous to the role of the prosecutor and warranted the extension of absolute immunity to social workers. The court's rationale is instructive:

> If social service workers were required to guard against possible section 1983 claims arising from such decisions, their evaluation of the information at hand could be easily colored and, it may be expected, sometimes at the expense of the life or well-being of abused or neglected children. Such a result cannot be countenanced for the administration of remedial child-protective laws

> any more than prosecutors' enforcement of criminal laws. (At p. 1099.)

Under the second prong of the analysis, the court must examine the functions with which a particular official or class of officials has been lawfully entrusted and evaluate the effect that the exposure to a particular form of liability would likely have on appropriate exercise of those functions. As noted in *Vosburg v. Department of Social Services, supra*:

> Like a prosecutor, a social worker must exercise her best judgment and discretion in deciding when to file a removal petition. The welfare of the state's children would be jeopardized if social workers had to weigh their decision in terms of their potential personal liability. In short, the denial of absolute immunity here has the potential to adversely affect the efficient functioning of the state's child welfare system. Additionally, the chances are high that suits against social workers would occur with some degree of regularity. Parents resentful of and humiliated by an attempt to usurp their rights would likely channel their frustrations "into the ascription of improper and malicious actions against the state's advocate." (884 F.2d at 137.)

2. There are no conflicts between decisions of the Circuit Courts of Appeal on the issue of absolute immunity applied to social workers.

The cases cited by Petitioners, which have declined to grant absolute immunity to social workers investigating child abuse allegations, are clearly distinguishable. *Snell v. Tunnell* (10th Cir. 1990) 920 F.2d 673, involves a

very fact specific analysis of the Oklahoma procedure in which the social worker's preparation of an application for an order for conditional protective custody was pre-adjudicatory and seeks information which could be developed in other pre-adjudicatory procedures in advance of a formal petition and court hearing. Similarly, *Austin v. Borel* (5th Cir. 1987) 830 F.2d 1356, is also distinguishable. There, the mere filing of a verified complaint by the social worker without any intervention of the state prosecutor resulted in the immediate removal of the child. In *Spielman v. Hildebrand* (10th Cir. 1989) 873 F.2d 1377, the unilateral decision by the social worker to remove the child from the home before judicial process intervened was not accorded absolute immunity.

The court below acknowledged that foster family homes are strictly regulated by the State DSS, which has established regulations for the inspection and licensing of foster family homes. Since the State DSS cannot oversee all foster family homes, the responsibility for supervising foster family homes is delegated to public foster family agencies such as Respondent San Mateo County Department of Social Services (Cal. Code Regs. Tit. 22, § 88000 et seq.). The public foster family agency is required by statute to monitor the activities of licensed foster family homes and complaints regarding negligent treatment or maltreatment of children (Penal Code § 11165.2) or child abuse (Penal Code § 11165.6) must be investigated and written reports, in a format specified by the California Administrative Code (Cal. Code Regs. Tit. 22, § 88050(f)) submitted to the State DSS. As alleged in the complaint below, these investigative reports were used by the State DSS to determine whether to initiate and conduct formal

proceedings to revoke, suspend or impose restrictions on a foster family license.

Completing such a statutorily mandated investigation and transmitting it to the state licensing agency for further action is almost identical to the social worker completing an affidavit used by the prosecutor in obtaining a court order for immediate apprehension and custody of a child in *Coverdell v. Department of Social and Health Services* (9th Cir. 1987) 834 F.2d 758, 764. To the same effect is *Kurzawa v. Miller* (6th Cir. 1984) 732 F.2d 1456 (social workers involved in filing a petition to remove child from custody of parents, which petition was then pursued by state prosecutor, was accorded absolute immunity) and *Vosburg v. Department of Social Services, supra* (social worker filing a juvenile abuse petition which resulted in temporary custody order entitled to absolute immunity). *Accord, Salyer v. Parsons* (4th Cir. 1989) 874 F.2d 374, 378 (social workers who investigated and filed a child neglect petition accorded absolute immunity).

CONCLUSION

It is respectfully submitted that the performance of the statutorily mandated duties of the county social worker defendants in monitoring, investigating and reporting on the activities of the petitioner foster family licensee to the State Department of Social Service is a function which is shielded by absolute immunity. It is the responsibility of social workers to protect the health and welfare of children assigned to foster homes and they must be able to perform these duties unhampered by the

threat of civil lawsuits. The petition for writ of certiori should be denied.

Dated: June 23, 1995.

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APPENDIX A

Full text of California statutes cited in reply brief.

California Health & Safety Code

§ 1550. – **Grounds For Suspension or Revocation of License, Registration, or Special Permits; Provision for Temporary Suspension.**

The Department may deny an application for, or suspend or revoke, any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

(b) Aiding, abetting or permitting the violation of this chapter or the rules and regulations promulgated under this chapter.

(c) Conduct which is inimical to the health, morals, welfare or safety of either an individual in or receiving services from the facility or the people of the State of California.

(d) The conviction of a licensee or other person mentioned in Section 1522, at any time during licensure, of a crime as defined in Section 1522.

(e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.

The Director may temporarily suspend any license or special permit, prior to any hearing when, in the opinion

of the Director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment or any other substantial threat to health or safety. The Director shall notify the licensee or holder of the special permit of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee or holder of the special permit, the Director shall, within fifteen days, set the matter for hearing and the hearing shall be held as soon as possible but not later than thirty days after receipt of the notice. The temporary suspension shall remain in effect until the time of the hearing is completed and the Director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the Director fails to make a final determination on the merits within thirty days after the original hearing has been completed.

§ 1551. **Conduct of Proceedings**

(a) Proceedings for suspension, revocation or denial of a license, registration or special permit under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Department shall have all powers granted by such provisions. In the event of conflict between provisions of this chapter and such provisions of the Government Code, the provisions of the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this Section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) The Department shall commence and process licensure revocations under this chapter in a timely and expeditious manner. Notwithstanding a contrary provision of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the Office of Administrative Hearings shall give priority calendar preference to licensure revocation hearings pursuant to this Chapter, particularly where the health and safety of clients are in question.

California Government Code

§ 1153. **Revocation, Suspension, Limitation or Condition of a Right, Authority, License of Privilege; Accusation; Contents; Verification**

A hearing to determine whether a right, authority, license or privilege shall be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or

by an employee of an agency before which the proceeding is to be held. The verification may be on information and belief.

§ 11504. Grant, Issuance, or Renewal of Right, Authority, License or Privilege; Statement of Issues; Contents; Verification, Service; Discovery.

A hearing to determine whether a right, authority, license or privilege, shall be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing, and in addition any particular matters which have come to the attention of the initiating party and which would authorize as denial of the agency action sought. The statement of issue shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issue shall be served in the same manner as an accusation; provided, that, if the hearing is held at the request of the respondent, the provisions of Section 11505 and Section 11506 shall not apply and the statement of issues, together with a notice of hearing, shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6 and 11507.7 and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

§ 11506. Notice of Defense, Time, Content; Form; Right to Hearing; Mitigation Statement

(a) Within fifteen days after service upon him of the accusation the respondent may file with the agency, a notice of defense in which he may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation on the grounds that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense.

(4) Admit the accusation in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

Within the time specified, respondent may file one or more notices of defense upon any or all of these grounds but all such notices shall be filed within the period unless the agency in its discretion authorizes the filing of a later notice.

(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of the respondent's right

to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(c) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

(d) Respondent may file a statement by way of mitigation even if he does not file a notice of defense.

(e) As used in this section, "file", "files", "filed" or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

§ 11507. Amended or Supplemental Accusation Before Submission Of Case

At any time before the matter is submitted for decision, the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges, the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

§ 11523. **Judicial Review**

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject however, to the statutes relating to the particular agency. Except as otherwise provided in this section, any such petition shall be filed within thirty days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. The complete record of the proceedings, or such parts thereof as are designated by the petitioner shall be prepared by the agency and shall be delivered to petitioner, within thirty days after a request therefore by him or her, upon payment of the fee specified in Section 69950 as now or hereinafter amended before the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which shall be collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where a petitioner, within ten days after the last day on which

reconsideration can be ordered, request the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until thirty days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record and certification.

California Administrative Code, Title 22. **Licensing of Community Care Facilities**

Chapter 8.8 **Foster Family Agencies**

Article 6. Complaints

§ 88050. **Investigations of Child Abuse or Neglect Complaints.**

(a) The foster family agency shall investigate all complaints of child abuse or neglect as defined in Penal Code Sections 11165.2 and 11165.6.

(1) When possible, joint visits by foster family agency staff, placement workers, and other investigative agencies or persons shall be conducted as necessary to complete the complaint investigation.

(b) The foster family agency shall, in addition to meeting the requirements set forth in Penal Code Section 11166 et seq., notify the licensing and placement agencies by telephone by the next working day following receipt of the complaint.

(c) Upon receipt of a complaint, the foster family agency shall make a site visit to the certified family home within ten calendar days after receiving the complaint, except in the following situations:

(1) A site visit shall be conducted within 24 hours when there is reason to believe that a child(ren) is in imminent danger.

(2) A law enforcement officer is conducting a criminal investigation and requests the foster family agency to postpone the site visit within the ten-day period.

(3) The foster family agency determines the site visit would jeopardize its investigation and/or endanger the health and safety of the children.

(A) Prior licensing approval shall be obtained before postponement of any site visit as described in Section 88050(c)(2) and (3) above.

(d) The foster family agency shall not identify the complainant to the certified family home unless permission has been granted by the complainant.

(e) The investigation shall include, but not be limited to:

(1) Interviews with all known victim(s), witness(es), and suspect(s).

(A) Victim(s) and witness(es) shall be interviewed in person and away from the certified family home.

(1) If it is not possible or desirable for the interview to be conducted away from the certified family home, the foster family agency shall document why this did not occur.

(2) Obtaining copies of all related reports from other investigative agencies, if available, and any medical reports.

(f) A written report shall be submitted to the licensing agency and the placement agency relating the findings of the investigation and actions taken within ten days after the complaint investigation has been completed.

(1) The report shall include the following:

(A) List of the complaint allegation(s).

(B) Identification of the person(s) who conducted the investigation.

(C) Name(s) of other agencies or persons who were contacted and/or involved in the investigation.

(D) The person(s) contacted at the certified family home.

(E) Summary of the investigation.

(F) Rationale for the action taken.

(2) The foster family agency shall make one of the following determinations after completion of each complaint investigation:

(A) Substantiated (S) – if it has been determined that the alleged incident(s) did occur.

(B) Inconclusive (I) – if it has been determined that the alleged incident(s) may have occurred but cannot be proven.

(C) Unfounded (U) – if it has been determined that the alleged incident(s) could not or did not occur.

(g) Upon substantiation of a complaint, the foster family agency shall ensure action is taken against the certified family home, which may include removal of the child(ren), removal of another household member or decertification of the home, even though there were not sufficient grounds to warrant criminal prosecution.

(h) The foster family agency administrator shall ensure copies of all complaint investigation reports alleging child abuse or neglect are provided to the Board of Directors.

(i) The foster family agency shall maintain a copy of all investigative reports and a log of all complaints received which shall include:

(1) The name of the certified family home involved.

(2) The complaint allegation(s).

(3) The date the complaint was received.

(4) The date the complaint visit was conducted.

(5) The date the complaint was resolved.

(6) The findings after completion of the complaint investigation, including a determination of substantiated, inconclusive or unfounded.

(7) The action taken as specified in paragraph (f) above.

(j) The licensing agency has the authority to conduct a separate complaint investigation of a certified family home.

California Penal Code Section 11165.2 **"Neglect"; "Severe Neglect"; "General Neglect"**

As used in this article, "Neglect" means the negligent treatment or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person.

(a) "Severe Neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

(b) "General Neglect" means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.

For purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specialized medical treatment for religious reasons, shall not for that reason alone be considered a neglected child. An informed and appropriate medical decision made by parent or guardian after consultation with a physician or

physicians who have examined the minor does not constitute neglect.

§ 11165.6. **"Child Abuse"**

As used in this article, "child abuse" means a physical injury which is inflicted by other than accidental means on a child by another person. "Child abuse" also means the sexual abuse of a child or any act or omission proscribed by section 273(a) "willful cruelty or unjustifiable punishment of a child" or 273(d) "unlawful corporal punishment or injury". "Child abuse" also means the neglect of a child or abuse in out-of-home care, as defined in this article. "Child abuse" does not mean a mutual affray between minors. "Child abuse" does not include an injury caused by reasonable and necessary force used by a peace officer to quell a disturbance threatening physical injury to person or damage to property, to prevent physical injury to person or damage to property, for purposes of self-defense, to obtain possession of weapons or other dangerous objects within the control of a child, or to apprehend an escapee.

§ 11166.1. **Duty of Child Protective Agency**

When a child protective agency receives a report of abuse alleged to have occurred in facilities licensed to care for children by the State Department of Social Services, it shall, within twenty-four hours, notify the licensing office with jurisdiction over the facility. The child protective agency shall send the licensing agency a copy of its investigation and other pertinent materials.

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